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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/771,135

01/27/2001

Stephen D. Messer

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EXAMINER

LE, KHANH H

ART UNIT

PAPER NUMBER

3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/771,135

Applicant(s)

MESSER ET AL.

Examiner

Khanh H. Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/07/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the correspondence filed 11/07/2006.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/07/2006 has been entered.

Claims 1-50 have been canceled. Claim 51 is new.

Claim Rejections - 35 USC § 112 (second paragraph)

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 51 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 51 reads:

A data processing system for supporting web-based commerce and commission tracking on a multi-node network comprising:
a first affiliate site operated by a first affiliate for displaying data comprising promotions and a plurality of other information on a web page;
a second affiliate site operated by a second affiliate for displaying data comprising promotions and a plurality of other information on a web page;

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a clearinghouse server in direct communication with said first and second affiliate sites, said clearinghouse server operable to parse HTTP commands data received from said first and second affiliate sites, said HTTP data including an affiliate field comprising one or more subvariables; and

a merchant site in communication with said clearinghouse server, wherein said merchant site is operable to obtain information triggered by said affiliate site from said clearinghouse server and said merchant site is operable to submit information to said clearinghouse server relating to affiliate referral activity on said merchant site;

wherein said clearinghouse server is operable to assign compensation to both said first affiliate and said second affiliate in response to (i) a network-connected user's use of a primary referral link provided by said first affiliate site to reach said second affiliate site; (ii) said user's use of a secondary referral link provided by said second affiliate site to reach said merchant site; and (iii) said user's completion of a transaction with said merchant site.

Claim 51 is a system claim yet the structures and hardware involved in the first affiliate site, the second affiliate site and the merchant site are not detailed enough and thus unclear.

As to the first and second affiliate sites, it is not clear what structure and hardware make up the "sites". It is claimed the 2 sites display some information on web pages. However a web page is only a collection of files, thus it is not clear what "site" means, since in a system claim, apparatus, structure and/or hardware has to be claimed.

As to the merchant site, it is claimed "operable to " obtain some information and "operable to" submit some other information to the CLEARINGHOUSE server (herein CH server), so it is reasonable to assume some computing hardware is involved. However "relating to affiliate referral activity on said merchant site" is unclear, because there was no claim of any structure at the merchant site which allows the carrying out of such affiliate referral activity.

As to the first and second affiliate sites, the last paragraph of the claim states

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"i) a network-connected user's use of a primary referral link provided by said first affiliate site to reach said second affiliate site; (ii) said user's use of a secondary referral link provided by said second affiliate site to reach said merchant site;" yet there is no recitation at the first and second affiliate sites of any structure or hardware to allow carrying out the above cited referral activities.

As to the merchant site, the last paragraph of the claim states *"(iii) said user's completion of a transaction with said merchant site."* yet there is no recitation at the merchant site of any structure or hardware to allow carrying out the above cited transaction.

As to the CH server, it is claimed it is operable to parse HTTP command data from said first and second affiliate sites. However *"said HTTP data including an affiliate field comprising one or more subvariables"* is unclear because it is just a recitation of what the data is. In other words, it is unclear what *"an affiliate field comprising one or more subvariables"* means to the structure of the CH server. (Again note this is a system claim). Since the CH server structure is configured to (operable to) parse data and this parsing structure operates regardless of the content of the data, it is unclear what effect, if any, the recitation of *"an affiliate field comprising one or more subvariables"* has on the structure of the CH server.

Further, as to *"said HTTP data including an affiliate field comprising one or more subvariables"*, it is further not claimed what is being done with this data, **so this is non-functional descriptive material.**

Further *"a CH server in direct communication with said first and second affiliates sites"* does not specify whether the CH server is in direct communication with each such first and second affiliates sites or only with one of them and e.g. with the second one via the first one. The next phrase *"operable to parse HTTP commands data received from said first and second affiliate sites"* also does not elucidate whether the communication is direct between each such affiliates sites and the CH server. The remarks on page 3, 4th paragraph, in discussing Fred.com of

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Landau, seems to suggest the CH server is in direct communication with the first affiliates site but still does not clarify as to the second affiliate site, so the claim is still unclear.

Further, in

“a merchant site in communication with said clearinghouse server, wherein said merchant site is operable to obtain information triggered by said affiliate site from said clearinghouse server and said merchant site is operable to submit information to said clearinghouse server relating to affiliate referral activity on said merchant site”;

“said affiliate site” is unclear because there were 2 affiliates sites mentioned earlier.

Further, at to the merchant site, *“information triggered by said affiliate site from said clearinghouse server”* is unclear as to what information is involved, and how it is triggered. Further, is it obtained by the merchant site from the CH server (since there is no structure claimed for sending any information from the affiliate sites to the CH server to relay to the merchant site) or from the 2 affiliates sites?

(It is suggested, to claim *“ to obtain, from said clearinghouse server, information triggered by... “* to at least clarify that the merchant site obtains information directly from the CH server.

Appropriate correction is required to all the above. It is suggested, at least, that all the steps performed by each site or CH server be recited, for each such structure, with recitation of each corresponding apparatus/structure/or hardware to carry out the steps.

Claim Rejections - 35 USC § 112 (first paragraph)

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 51 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicants claim that new claim 51 is supported throughout the specification, especially at pages 19-20 and 27-33, however the Examiner disagrees.

Claim 51 claims *"said clearinghouse server operable to parse HTTP commands data received from said first and second affiliate sites, said HTTP data including an affiliate field comprising one or more subvariables"*

According to <http://www.pcwebopedia.com/TERM/P/parse.htm>, "parsing" is explained as follows:

"In linguistics, to divide language into small components that can be analyzed. For example, parsing this sentence would involve dividing it into words and phrases and identifying the type of each component (e.g., verb, adjective, or noun).

Parsing is a very important part of many computer science disciplines. For example, compilers must parse source code to be able to translate it into object code. Likewise, any application that processes complex commands must be able to parse the commands. This includes virtually all end-user applications.

Parsing is often divided into lexical analysis and semantic parsing. Lexical analysis concentrates on dividing strings into components, called tokens, based on punctuation and other keys.

Semantic parsing then attempts to determine the meaning of the string.

According to [http:// en.wikipedia.org/wiki/Parsing](http://en.wikipedia.org/wiki/Parsing), parsing is explained as follows:

*"In computer science and linguistics, **parsing** (more formally syntax analysis) is the process of analyzing a sequence of tokens to determine its grammatical structure with respect to a given formal grammar. A **parser** is the component of a compiler that carries out this task.*

Parsing transforms input text into a data structure, usually a tree, which is suitable for later processing and which captures the implied hierarchy of the input. Lexical analysis creates tokens from a sequence of input characters and it is these tokens that are processed by a parser to build a data structure such as parse tree or abstract syntax trees."

and per [http:// en.wikipedia.org/wiki/Formal_grammar](http://en.wikipedia.org/wiki/Formal_grammar)

*"In computer science and linguistics, a **formal grammar**, or sometimes simply **grammar**, is a precise description of a formal language — that is, of a set of strings. The two main categories of formal grammar are that of generative grammars, which are sets of rules for how strings in a language can be generated, and that of analytic grammars, which are sets of rules for how a string can be analyzed to determine whether it is a member of the language. In short, an analytic grammar describes how to recognize when strings are members in the set, whereas a generative grammar describes how to write only those strings in the set."*

Thus parsing involves at least analyzing, breaking apart an input stream. A text search of the specifications found no disclosure of the following terms or variations thereof: parsing, analyzing, breaking, http, strings, tokens, field, subvariable. Nor any of the above details of parsing cited above can be found. Therefore claim 51 introduces new matter.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 51 is rejected under 35 U.S.C. 102(e) as being anticipated by Hoyt et al, US 2001, 0034646A1.

Claim 51:

A data processing system for supporting web-based commerce and commission tracking on a multi-node network comprising:

a first affiliate site operated by a first affiliate for displaying data comprising promotions and a plurality of other information on a web page (Fig 1 item 150 and associated text) ;

a second affiliate site operated by a second affiliate for displaying data comprising promotions and a plurality of other information on a web page (Fig 1 item 140 or 150 and associated text) ;

a clearinghouse server in direct communication with said first and second affiliate sites (Fig 1 item 190 and associated text: RLS central server), said clearinghouse server operable to parse HTTP commands data received from said first and second affiliate sites

([0042]-[0046]:commands as to affiliates member registration, and referral reimbursement linking, advertising, searching options)

,said HTTP data including an affiliate field comprising one or more subvariables (Fig 1 item 190 and associated text: RLS central server; [0031] [0032] [0046] as to HTTP commands and affiliate fields with e. g. URL's ; and

a merchant site in communication with said clearinghouse server (Fig 1 item 150 and associated text) , wherein said merchant site is operable to obtain information triggered by said affiliate site from said clearinghouse server and said merchant site is operable to submit information to said clearinghouse server relating to affiliate referral activity on said merchant site (**Fig 3, especially items 470 , 480 and associated text; see [0068]**) ;

wherein said clearinghouse server is operable to assign compensation to both said first affiliate and said second affiliate (see [0046]; central server database containing all members profile data for easy centralized updates; **see [0068], Fig 3 items 470,480 and associated text**) in response to (i) a network-connected user's use of a primary referral link provided by said first affiliate site to reach said second affiliate site; (ii) said user's use of a secondary referral link provided by said second affiliate site to reach said merchant site; and (iii) said user's completion of a transaction with said merchant site (Fig 3, especially items 470 , 480 and associated text; see paragraphs [0056], [0066] as to serial referrals; see [0002] , [0009]; [0011], [0030], [0035], [0037],],[0042], [0070] as to referrals tracking and compensation) .

Response to Arguments

9. The prior art arguments are moot because the previous art rejections are withdrawn, with new prior art applied as necessitated by amendment.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

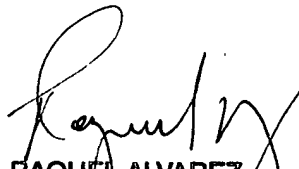
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 11, 2006



KHL


RAQUEL ALVAREZ
PRIMARY EXAMINER